

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	Docket No. CAA-05- 2005 0030
)	
Kikkoman Foods, Incorporated)	Proceeding to Assess a Civil
Walworth, Wisconsin,)	Penalty under Section 113(d)
)	of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22 (2004).

2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA).

3. Respondent is Kikkoman Foods, Incorporated (Kikkoman), a corporation doing business in Wisconsin.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative

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REGION 5



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

JUN 30 2005

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Daniel Miller, Vice President
Kikkoman Foods, Inc.
Hwy 14 and Six Corners Road
Walworth, WI 53184

Dear Mr. Miller:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves violations of Kikkoman Foods, Incorporated, CAA Docket No. **CAA-05-2005 0030**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on **JUN 30 2005**.

Pursuant to paragraph 36 of the CAFO, Kikkoman must pay the civil penalty within 30 days after the effective date of this CAFO. Your check must display the case docket number, **CAA-05-2005 0030** and the billing document number, **050305034**.

Please direct any questions regarding this case to Mony Chabria, Associate Regional Counsel, at 312-886-6842.

Sincerely yours,

Bonnie Bush, Acting Chief
Air Enforcement and Compliance Assurance Branch
Michigan/Wisconsin Section

Enclosure

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action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO).

40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Kikkoman admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Kikkoman waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. As of February 17, 1995, U.S. EPA approved Wisconsin Administrative Code (WAC) § NR 406.03 (Permit requirements and exemptions for construction permits), § NR 407.04 (Permit application requirements) and § NR 407.08 (Dates by which permits are required) as part of the federally enforceable SIP for Wisconsin. 60 Fed. Reg. 3538.

10. On April 27, 1995, U.S. EPA approved WAC § NR 424.03 (Process lines emitting organic compounds) as part of the federally enforceable SIP for Wisconsin. 60 Fed. Reg. 20643.

11. WAC § NR 406.03 requires that no person may commence construction, reconstruction, replacement, relocation or modification of a stationary source unless the person has a construction permit for the source.

12. WAC § NR 407.04 requires that the owner or operator of a new or modified air contaminant source shall submit an operation permit application by the date that the application for the construction permit is filed.

13. WAC § NR 407.08 requires that the owner or operator of a new or modified air contaminant source which is required to obtain an operation permit may not operate without an operation permit.

14. WAC § NR 424.03 requires that process lines emitting organic compounds which were constructed on or after August 1, 1979, shall control volatile organic compound emissions by at least 85%.

15. 40 CFR § 52.23 provides, among other things, that a person who fails to comply with any approved regulatory provision of a SIP is in violation of and subject to an enforcement action under Section 113 of the Act.

16. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for SIP violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

17. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

18. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations

19. Kikkoman owns and operates a food processing facility at Hwy 14 and Six Corners Road in Walworth, Wisconsin.

20. In late 2000, Kikkoman began construction of a new spray dryer at the Walworth facility. Operation of the spray dryer began on October 8, 2001.

21. Kikkoman's operation of the spray dryer results in emissions of volatile organic compounds (VOCs).

22. Kikkoman is subject to WAC §§ NR 406.03, NR 407.04, NR 407.08, NR 424.03.

23. Kikkoman failed to obtain a construction permit prior to construction of the spray dryer.

24. Kikkoman failed to submit an operation permit application by the date that the construction permit application was required to be filed.

25. Kikkoman is operating the spray dryer without controlling volatile organic compound emissions by at least 85%.

26. On September 8, 2004, Kikkoman submitted to the Wisconsin Department of Natural Resources a construction and operation permit application for the spray dryer.

27. On June 14, 2005, Wisconsin Department of Natural Resources issued permit no. 04-RSG-262 authorizing construction and initial operation of the spray dryer.

28. On June 29, 2005, an Administrative Consent Order signed by U.S. EPA and Kikkoman became effective.

29. The Administrative Consent Order requires that, by December 15, 2005, Kikkoman install and operate a thermal

oxidizer whenever the spray dryer is in operation. The Administrative Consent Order also requires that, by April 15, 2006, Kikkoman will demonstrate the thermal oxidizer has a minimum VOC destruction efficiency of 95%.

Violations

30. From late 2000 until September 8, 2004, Kikkoman violated the requirements of WAC § NR 406.03, by failing to obtain a construction permit prior to construction of its spray dryer.

31. From late 2000 until September 8, 2004, Kikkoman violated the requirements of WAC § NR 407.04, by failing to submit an operation permit application.

32. From October 8, 2001 until June 14, 2005, Kikkoman violated the requirements of WAC § NR 407.08, by operating the spray dryer without an operation permit.

33. From October 8, 2001 until the present, Kikkoman violated the requirements of WAC § NR 424.03, by operating the spray dryer without controlling VOC emissions by at least 85%. Kikkoman's violation of WAC § NR 424.03 will continue until it installs and operates a thermal oxidizer, which it has agreed to do before December 15, 2005.

34. Kikkoman's violation of the above-referenced approved regulatory provisions of the Wisconsin SIP constituted a violation of Section 113 of the Act, 42 U.S.C. § 7413.

Civil Penalty

35. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and Respondent's cooperation, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$110,670.

36. Kikkoman must pay the \$110,670 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

37. Kikkoman must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

38. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Mony Chabria, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

39. This civil penalty is not deductible for federal tax purposes.

40. If Kikkoman does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

41. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Kikkoman will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Kikkoman will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Final Statement

42. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Violations section of this CAFO.

43. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

44. This CAFO does not affect Kikkoman's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 42 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

45. Kikkoman certifies that it is complying fully with WAC §§ NR 406.03, NR 407.04, and NR 407.08, and that it will be complying with WAC § NR 424.03 by December 15, 2005, after installation of a thermal oxidizer to control emissions from its spray dryer.

46. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act¹ Stationary Source Civil Penalty Policy" to determine Kikkoman's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

47. The terms of this CAFO bind Kikkoman, and its successors, and assigns.

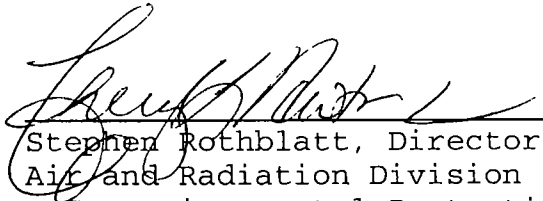
48. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

49. Each party agrees to bear its own costs and attorneys' fees in this action.

50. This CAFO and the Administrative Consent Order described in paragraph 28 constitute the entire agreement between the parties.

U.S. Environmental Protection Agency, Complainant

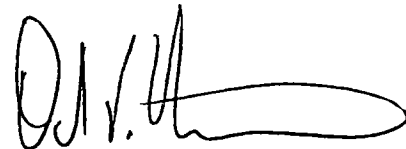
6/29/05
Date



Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

Kikkoman Foods, Inc., Respondent

June 27, 2005
Date



Name: Daniel P. Miller
Title: Vice President
Kikkoman Foods, Inc.

CAA-05- 2005 0030

CONSENT AGREEMENT AND FINAL ORDER

Kikkoman Foods, Inc.

Docket No. ~~CAA-05-~~ 2005 0030

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

6/30/2005
Date

Steve Rothblatt

Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

CERTIFICATE OF SERVICE

I, Mony Chabria, certify that the original and one copy of the Consent Agreement and Final Order, docket number CAA-05-2005-0030 was filed with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, on June 30, 2005.

I also certify that I mailed an original Consent Agreement and Final Order, docket number CAA-05-2005-0030, by Certified Mail, Return Receipt Requested, to:

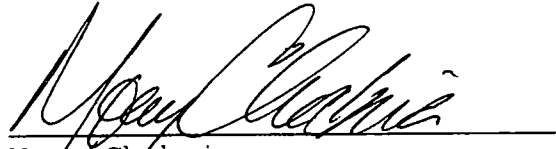
Daniel Miller
Vice President
Kikkoman Foods, Inc.
Hwy 14 and Six Corners Road
Walworth, WI 53184

and a copy of the of the Consent Agreement and Final Order by First Class Mail to:

Linda Bochert
Michael Best & Friedrich
One South Pinckney Street
PO Box 1806
Madison, WI 53701

Lauren Hambrook
Environmental Engineering Supervisor
Air Management, Southeast Region
9531 Rayne Road Suite 4
Sturtevant, WI 53177

on the 5th day of July, 2005.


Mony Chabria
Associate Regional Counsel

CERTIFIED MAIL RECEIPT NUMBER: 7099 3400 0000 9597 4019